

MAY - 7 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

Federal Communications Commission
 Office of Secretary

In the Matter of)	
)	
Petition of the Connecticut)	RM No. 9258
Department of Public Utility)	
Control for Amendment to Rule)	DA 98-743
Making)	
)	

COMMENTS

Teleport Communications Group Inc. ("TCG") hereby opposes the Petition for Rulemaking filed by the Connecticut Department of Public Utility Control ("DPUC") on March 31, 1998. The DPUC Petition seeks to reopen issues regarding the permissibility of service-specific overlay area codes that already have been investigated and rejected in the Ameritech Order and the Local Competition proceeding. Because the DPUC raises no new issues, there is no reason to revisit the Commission's well-supported decisions to prohibit service-specific overlays.

I. BACKGROUND

The Communications Act grants the Commission "exclusive jurisdiction" over the North American Numbering Plan ("NANP") in the United States.¹ Consistent with the Commission's broad regulatory authority over numbering administration, it has ruled definitively against the adoption of service-specific or technology-specific overlay plans. The DPUC essentially is requesting that the

1. 47 U.S.C. § 251(e)(1).

Commission reconsider this pro-competitive policy first established in the Ameritech Order and affirmed in the Local Competition proceeding.

In the Ameritech Order,² the Commission set forth guidelines for states to apply when carrying out the delegated duty to administer area code numbering plans, stating that the administration of numbers

(1) must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers; (2) should not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) should not unduly favor one technology over another.³

The discriminatory and anticompetitive aspects of the Ameritech wireless overlay plan — like the wireless overlay anticipated by the DPUC — violated these principles.

The Commission identified three discriminatory aspects of the Ameritech plan that it designated as "exclusion," "segregation," and "take-back."⁴ The exclusion aspect related to Ameritech's plan to continue issuing numbers from the existing NPA to wireline carriers, but not to wireless carriers. Under the segregation aspect of the proposal, only wireless carriers would receive numbers under the new NPA; wireline carriers would continue to receive numbers from the existing NPA. Finally, the take-back aspect of the proposal required wireless carriers to take back from their subscribers all numbers previously assigned under

2. Proposed 708 Relief Plan, 10 FCC Rcd 4596 (1995) ("Ameritech Order").

3. Id. at 4604.

4. See Petition at 5 n.8.

the existing NPA. This requirement would not be imposed on the wireline carriers.⁵ The Commission determined that "as a matter of law," these attributes violated Sections 201(b) and 202(a) of the Communications Act.⁶ By favoring wireline carriers and customers over wireless carriers and customers, the plan was not in accordance with the Commission's guidelines.

In its Second Report and Order on local competition, the Commission clarified that the holding in its Ameritech Order prohibited all service-specific overlays, not just the plan presented by Ameritech. On this basis, it expressly rejected a plan by the Public Utility Commission of Texas ("PUCT") to issue a prospective wireless overlay area code.⁷ These findings are supported by the Communications Act and public policy, and the DPUC has not provided any justification for reassessing the prohibition on service-specific overlays. Although the Commission may wish to consider future petitions for waiver with respect to specific overlay plans, there is no basis for the initiation of a rulemaking simply to reconsider the same arguments already considered and decided by the Commission.

5. Ameritech Order, 10 FCC Rcd at 4605.

6. Id. Section 201(b) prohibits any unjust or unreasonable practice. 47 U.S.C. § 201(b). Section 202(a) makes it unlawful for any common carrier "to make any unjust or unreasonable discrimination" in its practices. 47 U.S.C. § 202(a).

7. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order, 11 FCC Rcd 19392, 19518 (¶ 285), 19527 (¶ 304) (1996) ("Second Report and Order").

II. THE DPUC PETITION PROVIDES NO BASIS TO SUPPORT REOPENING THE SERVICE-SPECIFIC OVERLAY ISSUE

The DPUC acknowledges the Commission's well-established precedent prohibiting service-specific overlays, but asserts that the policy should be reconsidered. However, its bases for initiating a rulemaking have already been rejected by the Commission. First, the DPUC claims that unless it has been determined that wireline and wireless carriers are in direct competition, "application of the FCC's requirements unnecessarily dooms the implementation of a service specific overlay."⁸ Second, the DPUC believes that wireless overlays will better address number exhaust issues. Finally, the DPUC attests that residential and business customers have requested that the DPUC assign a wireless NPA.⁹ The DPUC raises no new issues for review and thus, has provided no reason to revisit the Commission's policy.

A. The DPUC Has Not Correctly Interpreted the Underpinnings of the Commission's Policy

According to the DPUC, Commission concerns regarding the anticompetitive and discriminatory nature of service-specific overlays are not applicable if the two services — wireless and wireline — are not competing. This analysis is inaccurate. The Commission's concern is the ability of carriers to compete, not their present status as competitors.¹⁰ For wireless providers to compete with wireline, they

8. Petition at 5.

9. Id. at 6.

10. Indeed, this is precisely the reason for TCG's strong interest in matters regarding numbering administration policies.

must enjoy similar numbering patterns as wireline providers. The Commission rejected service-specific area codes based on its finding that such codes "would unduly inhibit competition."¹¹ The Commission's intention is to preserve competitive opportunities, not to cast aside policies if services are not considered to be substitutes of one another within a certain period of time.¹²

At bottom, overlay plans hinder competitive entry, provide certain industry segments an unfair advantage, and are not technologically neutral.¹³ Indeed, two of the infirmities identified in the Ameritech Order — segregation and exclusion — generally will be present in any wireless overlay plan. As with the Ameritech plan, any wireless overlay fails to distribute fairly the competitive burdens of the number exhaustion relief plan.

B. Wireless Overlays May Not Provide Extended Relief from Number Exhaust

The DPUC clearly believes that service-specific overlays provide an improved solution to number exhaust problems.¹⁴ However, the Commission already has rejected this claim when raised by the PUCT in connection with its proposed wireless-only overlay. The PUCT had stated that its prospective wireless overlay would provide the benefits of "an extended life span for the relief plan."¹⁵ The

11. Second Report and Order, 11 FCC Rcd at 19518 (¶ 285).

12. See Petition at 8-10.

13. Second Report and Order, 11 FCC Rcd at 19518 (¶ 285).

14. Petition at 4.

15. See Second Report and Order, 11 FCC Rcd at 19528 (¶ 306).

Commission was unpersuaded by this argument, explaining that "[w]hat extends the life span of a relief plan, however, is not so much the wireless overlay as the introduction of a new NPA with its 792 additional NXXs."¹⁶ In addition, the NANPA Director explained that service-overlays "will almost certainly lead to waste of valuable numbering resources, and that they could be viewed as discriminatory."¹⁷ Similarly, Bellcore has stated that the use of NPAs for service-specific overlays are inefficient, wasteful, and potentially discriminatory.¹⁸ The Commission implicitly concurred, finding that "[s]ervice-specific and technology-specific overlays do not further the federal policy objectives of the NANP."¹⁹

C. The Commission Previously Rejected a Wireless Overlay, Even Though It was Purportedly Favored by the Public

Finally, the DPUC claims that members of the general public overwhelmingly suggested service-specific overlays. This argument has not persuaded the Commission in the past. For example, the PUCT also cited as support for the wireless overlay that the wireless overlay enjoyed "overwhelming support from the

16. Id.

17. Letter from Ronald R. Conners, Director, North American Numbering Plan Administration to Geraldine A. Matise, Chief, Network Services Division, Common Carrier Bureau, FCC, (March 21, 1996).

18. Second Report and Order, 11 FCC Rcd at 19523 (¶ 296) (footnote omitted).

19. Id.

affected public."²⁰ However, the Commission still declared the PUCT wireless-only overlay violated the Ameritech Order on its face.²¹ Although the DPUC and the Commission both have an obligation to consider consumers' views, these views should not be permitted to justify anticompetitive and discriminatory policies, which, in themselves, would lead to adverse results for consumers. Thus, the DPUC has not provided any new basis upon which the Commission should reconsider its policy prohibiting service-specific overlays.

III. CONCLUSION

The DPUC requests that the Commission initiate a rulemaking to reconsider its prior rejection of service-specific overlays. The DPUC declares that the current policy is meaningless in the absence of competition between wireless and wireline carriers, that wireless overlays will help extend number exhaust relief plans, and that consumers prefer service-specific overlays. The Commission has considered each of these arguments in establishing its policy, placing an emphasis on preserving competitive opportunities for competitive carriers. Because this issue

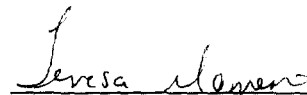
20. Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, NSD File No. 96-8, PUCT Petition (filed May 9, 1996) at 7.

21. Second Report and Order, 11 FCC Rcd at 19527 (¶ 304).

already has been settled according to the law and existing public policy concerns,
the Commission should deny the DPUC Petition for Rulemaking.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

A handwritten signature in cursive script, appearing to read "Teresa Marrero", is written over a horizontal line.

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Dated: May 7, 1998

CERTIFICATE OF SERVICE


I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments was sent by hand-delivery and first-class mail, as indicated, this 7th day of May, 1998, to the following:

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